HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5494 OF 1997.

Sadichha Mahila Mandal.
Reg. No. Mah/805/Thane,
having their Authorised
Ration Shop No. 41-F-181,
at Kopari village, New Bombay,
Post Vashi, Taluka & District
Thane. ...Petitioner.

Versus.

1. State of Maharashtra
at the instance of Secretary
to the Government of Maharashtra,
Department of Food & Civil
Supplies, Mantralaya, Mumbai

2. Controller of Rationing,

3. Gavdevi Mahila Mandal,
Kopari Village, Post Vashi. ..Respondents.

Shri. V. S. Gokhale, AGP for the Respondent -State.

CORAM: S.B.MHASE &
D.G.KARNIK, JJ.

DATE : FEBRUARY 1, 2006.

Oral Judgment (Per D.G.Karnik,J.):.

1. Shri. S. S. Lanke learned counsel for the petitioner is absent when called.

2. By this petition, the petitioner challenges the order dated September 15, 1997 passed by the respondent no.1 (Mr. Haribhau Bagade, the then Minister for Food & Civil Supplies, Government of

Maharashtra).

3. On May 23, 1991, the Government of Maharahstra issued an advertisement in the newspaper for allotment of a fair price shop (commonly known as "ration shop") at Koparigaon, District Nasik. Seven parties including the petitioner and the respondent No.3 made an application for the allotment of the fair price shop to them. By an order dated 30th January, 1992/ 1st February, 1992, the respondent No.2 - the Controller of Rationing, after enquiry held that the petitioner should be allotted the fair price shop. The order stated that it would become effective after the expiry of the period of revision under clause-30 of the Maharashtra Foodgrains Distribution (Second) Order of 1966 (for short, "the Foodgrains Order".)

4. Being aggrieved by the allotment of the shop to the petitioner, the respondent no.3 filed a revision application under clause 30 of the Foodgrains Order before the Government of Maharashtra. By an order dated May 2, 1992, the Government of Maharashtra rejected the revision application and confirmed the order passed by the Controller of Rationing - the respondent No.2 herein. The order was communicated to the respondent no.3 by a letter dated May 6, 1992.

5. It appears that five years after the dismissal of the revision another revision application was filed by the respondent no.3 before the Government of Maharashtra. The said revision application was entertained by Shri. Haribau Bagade, the then Minister for Food & Civil Supplies Department, Government of Maharashtra, and by an order dated 16th September 1997, the Minister allowed the second revision application and quashed the allotment of the fair price shop made to the petitioner and directed that the fair price shop be allotted to the respondent NO.3 herein. That order is impugned in this petition.

6. The revision petition was entertained under Clause 30 of the Foodgrains Order which reads as under:

> "30. Power to call for and examine records of proceedings and revise orders - The State Government, or in the Bombay Rationing Area an officer not below the rank of Deputy Secretary to Government designated by the State Government in this behalf, and elsewhere the Commissioner of the Division, may on an application made to it or him by an aggrieved person within 30 days, from the date of receipt by him of any order by which he is aggrieved, stay the enforcement of such order if considered necessary and may call for and examine the record of any inquiry or proceedings of any officer exercising or failing to exercise

the powers under this Order to add to, amend, vary, suspend, or cancel any authorisation issued or deemed to be issued under clause 7 or to forfeit the deposit (or any part thereof) paid or deemed to be paid by a ration shop or authorised agent as security or to take any other action under the provisions prescribed by or under this Order, for the purpose of satisfying itself or himself as to the legality or propriety of the order passed by such officer, and as to the regularity of the proceedings of such officer and may pass such order thereon as it or he, as the case may be, thinks fit:

Provided that, the State Government may, at any time, during the pendency of any inquiry or proceedings or within one year from the date of any order passed by any officer under the provisions prescribed by or under this Order, suo motu, stay any pending inquiry or proceedings or the enforcement of such Order if considered necessary and may, call for and examine the record of any such inquiry or proceedings and pass such order thereon as it thinks fit.

Provided further that, the State Government or the designated officer or the Commissioner, shall not pass any order under this clause which adversely affects any person, unless such person has been given a reasonable opportunity of being heard. "

7. The first proviso to clause 30 of Foodgrains Order lays down that the State Government may, at any time, within one year from the date of order passed by the officer, revise the order passed by him. The original order was passed by the respondent No.2 on January 30, 1992 and was communicated on February 1, 1992. The revision was

entertained after expry of period of one year. The was clearly beyond the powers of the Minister.

8. We also notice that the respondent No.3 had challenged the order of respondent No.2 dated January 30, 1992 allotting the fair price shop to the petitioner by filing a revision application. That revision application was numbered as 1092/507/4475. After hearing the respondent No.3, the first revision application was dismissed by the Government by an order dated May 2, 1992. We fail to see how the second revision against the very order which was once confirmed in the first revision was maintainable. Second revision was not filed or entertained as a review application and rightly so, because there is no power of review conferred under clause 30 of the Foodgrains Order. It was plain and simple second revision application to the same authority which ought not to have been entertained. We are of the view that the first respondent had no power of entertaining second revision application after the first revision application was dismissed on merits. The impugned order is clearly beyond the powers of the respondent No.1.

9. For these reasons, the impugned order

cannot stand and is required to be set aside. Accordingly, the impugned order is quashed and set aside. Petition is allowed. Rule is made absolute in terms of prayer clause (b).

(D.G.KARNIK,J.) **(S.B.MHASE, J.)**